

## § 222.122

(b) The formal request must be in writing and signed by the tribal chairman or authorized designee.

(Authority: 20 U.S.C. 7704 (d)(2) and (e)(8))

### **§ 222.122 What procedures are followed if it is determined that the local educational agency's funds will not be withheld under this subpart?**

If the Secretary determines that an LEA's payments will not be withheld under this subpart, the Assistant Secretary notifies the LEA and the affected Indian tribe or tribes, in writing, by certified mail with return receipt requested, of the reasons why the payments will not be withheld.

(Authority: 20 U.S.C. 7704 (d)-(e))

## **222.123–222.129 [Reserved]**

### **Subpart H [Reserved]**

## **Subpart I—Facilities Assistance and Transfers Under Section 8008 of the Act**

### **§ 222.140 What definitions apply to this subpart?**

In addition to the terms referenced or defined in §222.2, the following definitions apply to this subpart:

*Minimum school facilities* means those school facilities for which the Secretary may provide assistance under this part as follows:

(1) The Secretary, after consultation with the State educational agency and the local educational agency (LEA), considers these facilities necessary to support an educational program—

(i) For the membership of students residing on Federal property to be served at normal capacity; and

(ii) In accordance with applicable Federal and State laws and, if necessary or appropriate, common practice in the State.

(2) The term includes, but is not restricted to—

(i) Classrooms and related facilities; and

(ii) Machinery, utilities, and initial equipment, to the extent that these are necessary or appropriate for school purposes.

## **34 CFR Ch. II (7–1–05 Edition)**

*Providing assistance* means constructing, leasing, renovating, remodeling, rehabilitating, or otherwise providing minimum school facilities.

(Authority: 20 U.S.C. 7708)

### **§ 222.141 For what types of projects may the Secretary provide assistance under section 8008 of the Act?**

The types of projects for which the Secretary may provide assistance under section 8008 of the Act during any given year include, but are not restricted to, one or more of the following:

(a)(1) Emergency repairs to existing facilities for which the Secretary is responsible under section 8008.

(2) As used in this section, the term *emergency repairs* means those repairs necessary—

(i) For the health and safety of persons using the facilities;

(ii) For the removal of architectural barriers to the disabled; or

(iii) For the prevention of further deterioration of the facilities.

(b) Renovation of facilities for which the Secretary is responsible under section 8008 to meet the standards of minimum school facilities in exchange for an LEA or another appropriate entity accepting transfer of the Secretary's interest in them under §222.143.

(c) Provision of temporary facilities on Federal property pending emergency repairs.

(d) Construction of replacement minimum school facilities when more cost-effective than renovation and when the replacement facilities are to be transferred to local ownership under §222.143.

(Authority: 20 U.S.C. 7708)

### **§ 222.142 What terms and conditions apply to minimum school facilities operated under section 8008 by another agency?**

When minimum school facilities are provided under section 8008, the Secretary may—

(a) Arrange for the operation of the facilities by an agency other than the Department;

(b) Establish terms and conditions for the operation of the facilities; and

(c) Require the operating agency to submit assurances and enter into other

arrangements that the Secretary specifies.

(Authority: 20 U.S.C. 7708)

**§ 222.143 What terms and conditions apply to the transfer of minimum school facilities?**

When the Secretary transfers to an LEA or other appropriate entity (transferee) facilities that have been used to carry out the purposes of section 10 of Pub. L. 81-815 or section 8008, the Secretary establishes appropriate terms and conditions for the transfer including that it be—

- (a) Without charge; and
- (b) Consented to by the transferee.

(Authority: 20 U.S.C. 7708)

**§§ 222.144–222.149 [Reserved]**

**Subpart J—Impact Aid Administrative Hearings and Judicial Review Under Section 8011 of the Act**

**§ 222.150 What is the scope of this subpart?**

(a) Except as provided in paragraph (b) of this section, the regulations in this subpart govern all Impact Aid administrative hearings under section 8011(a) of the Act and requests for reconsideration.

(b) Except as otherwise indicated in this part, the regulations in this subpart do not govern the following administrative hearings:

(1) Subpart G, §§ 222.90–222.122 (Indian policies and procedures tribal complaint and withholding hearings).

(2) Subpart K, § 222.165 (hearings concerning determinations under section 8009 of the Act).

(Authority: 20 U.S.C. 7711(a))

[60 FR 50778, Sept. 29, 1995, as amended at 62 FR 35418, July 1, 1997]

**§ 222.151 When is an administrative hearing provided to a local educational agency?**

(a) Any local educational agency (LEA) that is adversely affected by the Secretary's (or the Secretary's delegatee's) action or failure to act upon the LEA's application under the Act or Pub. L. 81-874 is entitled to an

administrative hearing in accordance with this subpart.

(b) An applicant is entitled to an administrative hearing under this subpart only if—

(1) The applicant files a written request for an administrative hearing within 30 days of its receipt of written notice of the adverse action; and

(2) The issues of fact or law specified in the hearing request are material to the determination of the applicant's rights and are not committed wholly to the discretion of the Secretary.

(Authority: 20 U.S.C. 7711(a))

[60 FR 50778, Sept. 29, 1995, as amended at 62 FR 35418, July 1, 1997]

**§ 222.152 When may a local educational agency request reconsideration of a determination?**

(a)(1) An LEA may request reconsideration of any determination made by the Secretary (or the Secretary's delegatee) under the Act or Pub. L. 81-874, either in addition to or instead of requesting an administrative hearing under § 222.151.

(2) A request for reconsideration, or actual reconsideration by the Secretary (or the Secretary's delegatee), does not extend the time within which an applicant must file a request for an administrative hearing under § 222.151, unless the Secretary (or the Secretary's delegatee) extends that time limit in writing.

(b) The Secretary's (or the Secretary's delegatee's) consideration of a request for reconsideration is not prejudiced by a pending request for an administrative hearing on the same matter, or the fact that a matter has been scheduled for a hearing. The Secretary (or the Secretary's delegatee) may, but is not required to, postpone the administrative hearing due to a request for reconsideration.

(c) The Secretary (or the Secretary's delegatee) may reconsider any determination under the Act or Pub. L. 81-874 concerning a particular party unless the determination has been the subject of an administrative hearing